

IN THE SENATE

SENATE BILL NO. 1383, As Amended

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO THE SUSPENSION OF JUDGMENT AND SENTENCE; AMENDING SECTION 19-2601, IDAHO CODE, TO EXTEND THE PERIOD OF TIME THE COURT RETAINS JURISDICTION OVER A PRISONER AND TO PROVIDE THAT THE STATE BOARD OF CORRECTION SHALL BE RESPONSIBLE FOR DETERMINING THE APPROPRIATE PLACEMENT, EDUCATION, PROGRAMMING AND TREATMENT OF PRISONERS DURING THE PERIOD OF RETAINED JURISDICTION; AND AMENDING SECTION 19-2604, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE AMENDMENT OF JUDGMENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-2601, Idaho Code, be, and the same is hereby amended to read as follows:

19-2601. COMMUTATION, SUSPENSION, WITHHOLDING OF SENTENCE -- PROBATION. Whenever any person shall have been convicted, or enter a plea of guilty, in any district court of the state of Idaho, of or to any crime against the laws of the state, except those of treason or murder, the court in its discretion, may:

1. Commute the sentence and confine the defendant in the county jail, or, if the defendant is of proper age, commit the defendant to the custody of the state department of juvenile corrections; or

2. Suspend the execution of the judgment at the time of judgment or at any time during the term of a sentence in the county jail and place the defendant on probation under such terms and conditions as it deems necessary and expedient; or

3. Withhold judgment on such terms and for such time as it may prescribe and may place the defendant on probation; or

4. Suspend the execution of the judgment at any time during the first ~~one~~ three hundred ~~eighty sixty-five~~ (180365) days of a sentence to the custody of the state board of correction. The court shall retain jurisdiction over the prisoner for a period of up to the first ~~one~~ three hundred ~~eighty sixty-five~~ (180365) days or, if the prisoner is a juvenile, until the juvenile reaches twenty-one (21) years of age. During the period of retained jurisdiction, the state board of correction shall be responsible for determining the placement of the prisoner and such education, programming and treatment as it determines to be appropriate. The prisoner will remain committed to the board of correction if not affirmatively placed on probation by the court. In extraordinary circumstances, where the court concludes that it is unable to obtain and evaluate the relevant information within the ~~one hundred eighty (180) day~~ period of retained jurisdiction, or where the court concludes that a hearing is required and is unable to obtain the defendant's presence for such a hearing within such period, the court may decide whether to place the defendant on probation or release jurisdiction within a reasonable time, not

1 to exceed thirty (30) days, after the ~~one hundred eighty (180) day~~ period of  
 2 retained jurisdiction has expired. Placement on probation shall be under  
 3 such terms and conditions as the court deems necessary and expedient. The  
 4 court in its discretion may sentence a defendant to more than one (1) period  
 5 of retained jurisdiction after a defendant has been placed on probation in a  
 6 case. In no case shall the board of correction or its agent, the department  
 7 of correction, be required to hold a hearing of any kind with respect to a  
 8 recommendation to the court for the grant or denial of probation. Probation  
 9 is a matter left to the sound discretion of the court. Any recommendation  
 10 made by the department to the court regarding the prisoner shall be in the  
 11 nature of an addendum to the presentence report. The board of correction and  
 12 its agency, the department of correction, and their employees shall not be  
 13 held financially responsible for damages, injunctive or declaratory relief  
 14 for any recommendation made to the district court under this section.

15 5. If the crime involved is a felony and if judgment is withheld as  
 16 provided in subsection 3. of this section or if judgment and a sentence  
 17 of custody to the state board of correction is suspended at the time of  
 18 judgment in accordance with subsection 2. of this section or as provided  
 19 by subsection 4. of this section and the court shall place the defendant  
 20 upon probation, it shall be to the board of correction, to a county juvenile  
 21 probation department, or any other person or persons the court, in its  
 22 discretion, deems appropriate.

23 6. If the crime involved is a misdemeanor, indictable or otherwise, or  
 24 if the court should suspend any remaining portion of a jail sentence already  
 25 commuted in accordance with subsection 1. of this section, the court, if it  
 26 grants probation, may place the defendant on probation. If the convicted  
 27 person is a juvenile held for adult criminal proceedings, the court may  
 28 order probation under the supervision of the county's juvenile probation  
 29 department.

30 7. The period of probation ordered by a court under this section under a  
 31 conviction or plea of guilty for a misdemeanor, indictable or otherwise, may  
 32 be for a period of not more than two (2) years; and under a conviction or plea  
 33 of guilty for a felony the period of probation may be for a period of not more  
 34 than the maximum period for which the defendant might have been imprisoned.

35 SECTION 2. That Section 19-2604, Idaho Code, be, and the same is hereby  
 36 amended to read as follows:

37 19-2604. DISCHARGE OF DEFENDANT -- AMENDMENT OF JUDGMENT. (1) If  
 38 sentence has been imposed but suspended, or if sentence has been withheld,  
 39 upon application of the defendant and upon satisfactory showing that the  
 40 defendant has at all times complied with the terms and conditions upon which  
 41 he was placed on probation, or has successfully completed and graduated from  
 42 an authorized drug court program or mental health court program and has at  
 43 all times complied with the terms and conditions of probation during any  
 44 period of probation that may have been served following such graduation,  
 45 the court may, if convinced by the showing made that there is no longer cause  
 46 for continuing the period of probation, and if it be compatible with the  
 47 public interest, terminate the sentence or set aside the plea of guilty or  
 48 conviction of the defendant, and finally dismiss the case and discharge  
 49 the defendant; and this shall apply to the cases in which defendants have

1 been convicted and granted probation by the court before this law goes into  
2 effect, as well as to cases which arise thereafter. The final dismissal of  
3 the case as herein provided shall have the effect of restoring the defendant  
4 to his civil rights.

5 (2) If sentence has been imposed but suspended for any period during  
6 the first ~~one~~ three hundred ~~eighty~~ sixty-five (~~180~~365) days of a sentence  
7 to the custody of the state board of correction, and the defendant placed  
8 upon probation as provided in subsection 4. of section 19-2601, Idaho Code,  
9 upon application of the defendant, the prosecuting attorney, or upon the  
10 court's own motion, and upon satisfactory showing that the defendant has at  
11 all times complied with the terms and conditions of his probation, or has  
12 successfully completed and graduated from an authorized drug court program  
13 or mental health court program and has at all times complied with the terms  
14 and conditions of probation during any period of probation that may have  
15 been served following such graduation, the court may amend the judgment  
16 of conviction from a term in the custody of the state board of correction  
17 to "confinement in a penal facility" for the number of days served prior  
18 to suspension, and the amended judgment may be deemed to be a misdemeanor  
19 conviction.

20 (3) Subsection (2) of this section shall not apply to any judgment  
21 of conviction for a violation of any offense requiring sex offender  
22 registration as set forth in section 18-8304, Idaho Code. A judgment  
23 of conviction for a violation of any offense requiring sex offender  
24 registration as set forth in section 18-8304, Idaho Code, shall not be  
25 subject to dismissal or reduction under this section. A conviction for the  
26 purposes of this chapter means that the person has pled guilty or has been  
27 found guilty, notwithstanding the form of the judgment or withheld judgment.